

Remarks

Claims 2-7, 12-17, 19 and 20-23 remain pending in this application. The amendment and response filed July 15, 2004 has been entered. In view of the rejections and objections made to the claims by the Examiner, two new claims have been added, they are claims 22 and 23.

Before considering the new grounds of rejection in detail, the fundamental concepts of the present invention will be briefly reviewed. The present invention is directed to a dry powder cubic gel precursor comprising an encapsulating compound, an amphiphile capable of forming a cubic liquid crystalline phase, and optionally a solvent. The encapsulating compound (A), amphiphile (B), and optional solvent (C) are present in mass fractions relative to each other such that $1.0=a+b+c$ wherein a is the mass fraction of A, b is the mass fraction of B, and c is the mass fraction of C. Further, $1.0>a>0$, $1.0>b>0$, $1.0>c>0$ and a, b, and c do not fall within a cubic liquid crystalline phase region on a phase diagram representing phase behavior of A, B, and C.

Non-statutory Double Patenting Rejection

Claims 1, 3, 4, and 6 have been rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 10 of U.S. Patent No. 6,656,385 B2. Claim 1 has been canceled. A terminal disclaimer has been filed along with this response in order to overcome the rejection of claims 3, 4 and 6. Accordingly, the objection to claims 3, 4 and 6 is now moot.

Rejection under 35 USC §102(b)

Claims 1, 3, 8-11, 18 and 20 are rejected under 35 U.S.C. §102(b), as being anticipated by Yuan (USP 6,017,388). In view of the amendments made to claims 2-7, 12-17, 19 and 21, along with cancellation of claims 1, 8-11 and 20, the rejection under 35 USC §102(b) is moot.

Objections to claims

Claims 2, 5, 7, 12-17, 19 and 21 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims.

In view of this objection, claims 2, 5, 7, 12-17, 19 and 21 have been amended so that they are no longer dependent upon a rejected base claim and include all the limitations of the intervening claims.

Claims 1, 8-11, 18 and 20 have been canceled.

In summary, in view of the amendments and cancellations made to the claims in this application, along with the filing of the Terminal Disclaimer, the Examiner's rejection under 35 U.S.C. §102(b) and the non-statutory double patenting rejection are now moot and should be withdrawn. Accordingly, the present application is in form for allowance and early reconsideration and allowance of the claims, as currently pending, are earnestly solicited.

Respectfully submitted,
PATRICK SPICER et al.

By Karlyn A. Schnapp
Karlyn A. Schnapp
Registration No. 45,558
Attorney for Applicants

FROST BROWN TODD LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
(513) 651-6865

Certificate of Mailing

The undersigned certifies that this correspondence was deposited with the U.S. Postal Service with sufficient postage as first class mail and addressed to Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on February 4, 2005.

KAREN S. KRUETZKAMP
Karen S. Kruetzkamp